

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**UNITED STATES ex rel.
CURTIS LOCKEY, et al.,
Plaintiffs,**

v.

**CITY OF DALLAS, et al.,
Defendants.**

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**CIVIL ACTION NO. 3-11-CV-354-O
ECF**

**CITY OF DALLAS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
TO THE HONORABLE COURT:**

Defendant, City of Dallas (the "City"), files this motion and respectfully show the court the following:

**I.
No Claim Is Stated**

Relators have brought a False Claim Act lawsuit pursuant 31 U.S.C. § 3729 *et seq.* The United States elected not to intervene. Relators allege the City falsely certified that it would affirmatively further fair housing. The primary basis of their claim is that the City's analysis of impediments was defective for not complying with a HUD Guide and not including other information. While required to allege the purported fraud with particularity under Fed. R. Civ. P. 9(b), Relators make general allegations covering two decades and multiple City programs without identifying any specific action, representation, claim, statement, person, or payment. Moreover, the claims are based on events occurring before the certification and barred by statute of limitations. Finally, none of the alleged actions are false or fraudulent. All of the claims should be dismissed for failing to state a claim.

II.
Appendix

The City has filed a joint appendix in support of this motion and its motion to dismiss for want of jurisdiction. For purposes of a motion under Fed. R. Civ. P. 12(b)(6), a court may consider documents attached to or incorporated in the complaint and matters of which judicial notice may be taken. *United States ex rel. Willard v. Humana Health Plan of Texas Inc.*, 336 F.3d 375, 379 (5th Cir. 2003). The brief in support of this motion does refer to specific documents relied on by Relators in the Second Amended Complaint or matters which the Court may take judicial notice. In particular, the brief references the 2007 Analysis of Impediments which Relators question and the 1996 HUD Guide which Relators rely upon.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the City requests that the Court grant in whole, or alternatively in part, its motion to dismiss for failure to state a claim.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF DALLAS, TEXAS

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CERTIFICATE OF SERVICE

I certify that on March 16, 2012, I electronically filed the foregoing document with the clerk of court for the United States District Court for the Northern District of Texas using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all counsel of record who have consented in writing to accept this Notice as service of this document by electronic means.

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